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Karpal Singh a/l Ram Singh v Public Prosecutor

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COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO W-05(S)-66–03 OF 2014
MOHTARUDIN BAKI, TENGKU MAIMUN AND KAMARDIN HASHIM JJCA
3 AUGUST 2016

C

Criminal Law — Sentence — Appeal against sentence — Appellant convicted for offence under s 4(1)(b) of the Sedition Act 1948 — Appellant fined RM4,000 in default four months imprisonment — Whether learned trial judge right in passing sentence — Sedition Act 1948 s 4(1)(b)

D

This was an appeal against sentence of the appellant by the trial judge pursuant to the conviction under s 4(1)(b) of the Sedition Act 1948 ('the Act'). The appellant was fined RM4,000 in default four months imprisonment for the conviction. The appellant submitted that the learned trial judge had failed to consider: (a) the appellant's intention in holding the press conference was to give his legal opinion without any malice; (b) sentence in similar past cases; (c) mitigating factors; (d) s 3(1)(f) of the Act was no longer in effect at time of sentence; and (e) equality before the law. The appellant thus prayed that the fine imposed by the learned trial judge to be reduced to the figure of not more than RM2,000 as anything more than that would have disqualified the appellant as a member of Parliament which would effectively deprive him of his pension under art 48 of the Federal Constitution. The respondent had no objection against the appellant's contention and informed the court that they had withdrawn their appeal against sentence.

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Held, allowing the appeal against sentence and setting aside the sentence imposed by the learned trial judge:

(1) The court had taken into considerations all the factors submitted by the parties and substituted the sentence imposed by the learned trial judge with the sentence of a fine of RM1,800 in default two months imprisonment. Since the fine RM4,000 had been paid by the appellant, the court ordered the difference to be refunded (see para 11).

H

[Bahasa Malaysia summary

I

Ini adalah rayuan terhadap hukuman perayu oleh hakim yang bijaksana berikutan kepada sabitan di bawah s 4(1)(b) Akta Hasutan 1948 ('Akta'). Perayu didenda sebanyak RM4,000 jika ingkar empat bulan penjara bagi sabitan. Perayu berhujah bahawa hakim yang bijaksana telah gagal untuk

mempertimbangkan: (a) niat perayu dalam mengadakan sidang akhbar adalah untuk memberi pandangan undang-undangnya tanpa apa-apa niat jahat; (b) hukuman sama dengan kes-kes yang lepas; (c) faktor-faktor peringanan; (d) s 3(1)(f) Akta sudah tidak berkuat kuasa pada masa hukuman; dan (e) kesamaan dari segi undang-undang. Perayu oleh itu memohon bahawa denda yang dikenakan oleh hakim yang bijaksana dikurangkan kepada jumlah yang tidak melebihi RM2,000 kerana apa-apa yang lebih daripada itu akan menyebabkan perayu tidak layak sebagai ahli Parlimen yang mana akan secara efektif menafikannya daripada pencennya di bawah perkara 48 Perlembagaan Persekutuan. Responden tidak membantah terhadap hujahan perayu dan memberitahu mahkamah bahawa mereka telah menarik balik rayuan mereka terhadap hukuman.

Diputuskan, membenarkan rayuan terhadap hukuman dan mengetepikan hukuman yang dikenakan oleh hakim perbicaraan yang bijaksana:

(1) Mahkamah telah mempertimbangkan kesemua faktor yang dihujahkan oleh pihak-pihak dan mengantikan hukuman yang dikenakan oleh hakim bicara yang bijakasana dengan hukuman denda sebanyak RM1,800 jika ingkar penjara dua bulan. Memandagkan denda sebanyak RM4,000 telah dibayar oleh perayu, mahkamah memerintahkan perbezaan dibayar balik (lihat perenggan 11).]

Notes

For cases on appeal against sentence, see 4(3) *Mallal's Digest* (5th Ed, 2015) 3910–3951.

Cases referred to

Lim Guan Eng v PP [2000] 2 MLJ 577, FC (refd)
PP v Mark Koding [1983] 1 MLJ 111 (refd)
PP v Oh Keng Seng [1979] 2 MLJ 174 (refd)
PP v Ooi Kee Saik & Ors [1971] 2 MLJ 108 (refd)

Legislation referred to

Criminal Procedure Code ss 173A, 320
Federal Constitution art 48
Sedition Act 1948 ss 3(1)(f), 4(1)(b)

Appeal from: Criminal Trial No 45–10 of 2009 (High Court, Kuala Lumpur)

Gobind Singh Deo (Ramkarpal Singh, Alif Balkin, Malik Imtiaz, Mohd Haijan Omar, S Prakash, Ravin Jay, R Rishikessingam and RSN Rayer with him) (Karpal Singh & Co) for the appelant.
Awang Armadajaya bin Awang Mahmud (Hamdan bin Hamzah with him) (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Kamardin Hashim JCA (delivering judgment of the court):

[1] The appeals was formerly lodged by the late Karpal Singh a/l Ram Singh (YB Karpal) against both conviction and sentence handed down by the High Court under s 4(1)(b) of the Sedition Act 1948 ('the Act'). YB Karpal was fined RM4,000 in default four months imprisonment for the conviction. The said fine has since been paid.

[2] Before the appeals been finally heard and disposed off by this court, YB Karpal had passed away on 17 April 2014 in a motor vehicle accident. By virtue of s 320 of the Criminal Procedure Code ('the CPC'), both the appeals should finally be abated on the death of the YB Karpal. Nevertheless, by an order of this court dated 10 November 2014, the appeals were allowed to be proceeded by the widow of YB Karpal as substitutes. Section 320 of the CPC provides:

> 320 Death of parties to appeal
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> Every appeal under section 306 shall finally abate on the death of the accused, and every other appeal under this Chapter (except an appeal against a sentence of fine) shall finally abate on the death of the appellant.

[3] On 30 May 2016, by way of majority decision (Justice Tengku Maimun Tuan Mat (dissenting)), we dismissed the appeal against conviction. For that we have given our reasons for doing so. On the same day, after hearing both parties, we allowed the appeal against sentence whereby we set aside the fine of RM4,000 in default of four months imprisonment imposed by the learned trial judge and we substituted it with a fine of RM1,800 in default two months imprisonment.

[4] Before us, on sentence, learned counsel for the appellant submitted that the learned trial judge had misdirected himself, on the question of sentence which warrants appellate intervention. There were five issues raised before us by learned counsel to which were argued that learned trial judge had failed to consider. They were as follows:

(a) intention of YB Karpal in holding the press conference;

(b) sentence in similar past cases;

(c) mitigating factors;

(d) s 3(1)(f) of the Act was no longer in effect at time of sentence; and

(e) equality before the law.

[5] Mr Ramkarpal Singh, on behalf of the appellant submitted that the learned trial judge had failed to consider that YB Karpal in uttering the words complained of were merely gave his legal opinion without any malice. It was

submitted that intention, although not an ingredient for proof of the offence, is a mitigating factor. Mr Ramkarpal Singh relied on *Public Prosecutor v Oh Keng Seng* [1979] 2 MLJ 174 and *Public Prosecutor v Ooi Kee Saik & Ors* [1971] 2 MLJ 108.

[6] Learned counsel further submitted that the trial judge had failed to consider similar cases in the past beside only heavily rely on *Lim Guan Eng v Public Prosecutor* [2000] 2 MLJ 577. Mr Ramkarpal Singh submitted that there should be no disparity in sentence and urged us to follow the sentence imposed by Mohammed Azmi J in *Public Prosecutor v Mark Koding* [1983] 1 MLJ 111 where the respondent in that case was placed on good behavior bond under s 173A of the CPC.

[7] On the issue of mitigation, learned counsel submitted that the learned trial judge had failed to consider the facts and issues raised during mitigation. Such mitigating factors which learned trial judge had failed to consider and not reflected in the learned trial judge grounds of judgment includes, inter alia:

(a) YB Karpal was a leading criminal and constitutional lawyer in Malaysia;

(b) YB Karpal had contributed immensely to the development in the fields of criminal and constitutional law;

(c) YB Karpal was the Member of Parliament for Bukit Gelugor, Alor Setar Bandar and Jelutong since 1974 beside been a State Assemblymen for Bukit Gelugor between 1978 and 1999;

(d) YB Karpal was the Chairman of the Democratic Action Party (DAP); and

(e) YB Karpal was awarded with the Glory of India Award of Excellence in 2011. He was also named as one of the top 10 NRI Newsmakers of 2008 and he is without a doubt a national figure, a towering Malaysian. His achievements are to be found in part in the book 'The Tiger of Jelutong' published in 2014.

[8] In his submission before us, learned counsel had referred to some of the comments made by renowned judges about YB Karpal's impeccable character which deserved consideration. Among others, Raja Azlan Shah CJ (Malaya) had said that 'Mr Karpal Singh, who appeared for the appellant, if we may say so, most ably and who took every point that could be taken ...'.

[9] Finally, learned counsel sincerely pray that the fine imposed by the learned trial judge to be reduced to the figure of not more than RM2,000, as anything more than that would have disqualified YB Karpal as a Member of Parliament which would effectively deprive him of his pension under art 48 of the Federal Constitution.

[10] Learned deputy, in the person of Mr Awang Armadajaya bin Awang Mahmud take the stand that the prosecution had no quarrel about the fact that YB Karpal deserved the respect and that YB Karpal is a person with vast experience and very knowledgeable in law, and a public figure. Learned deputy as well appreciated YB Karpal contribution in the development of the law in Malaysia. For that, the learned deputy had informed this court that they had withdrawn their appeal against sentence.

[11] Taken into account of all the abovementioned factors into consideration, we are moved and inclined to allow the appeal against sentence. We set aside the sentence imposed by the learned trial judge. We substitute it with the sentence of a fine of RM1,800 in default two months imprisonment. Since the fine of RM4,000 had been paid, we make an order that the different to be refunded.

Appeal against sentence allowed and sentence imposed by learned trial judge set aside.

Reported by Dzulqarnain Ab Fatar